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April 10, 2013

BY ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **Ex Parte**
WC Docket Nos. 12-23, 11-42 & 03-109
CC Docket No. 96-45

Dear Ms. Dortch:

On April 2, 2013, Jason Ledlow, President of UTPhone, Inc., and the undersigned met with Commissioner Clyburn and Angela Kronenberg. On April 3, 2013, they met with Priscilla Argeris, legal advisor to Commissioner Rosenworcel; Nicholas Degani, legal advisor to Commissioner Pai; and Kim Scardino, Trent Harkrader, Garnet Hanly and Michelle Schaefer of the Telecommunications Access Policy Division of the Wireline Competition Bureau, to discuss UTPhone's Petition for Waiver in the above-referenced dockets. During the meetings the attached materials were shared.

Please direct any correspondence concerning this matter to the undersigned counsel.

Sincerely,

DAVIS WRIGHT TREMAINE LLP

A handwritten signature in black ink that reads "James M. Smith".

James M. Smith

Attachments

Anchorage
Bellevue
Los Angeles

New York
Portland
San Francisco

Seattle
Shanghai
Washington, D.C.

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Ms. Marlene Dortch
April 10, 2013
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cc (via e-mail): Commissioner Clyburn
Angela Kronenberg
Priscilla Argeris
Nicholas Degani
Kim Scardino
Trent Harkrader
Garnet Hanly
Michelle Schaefer

UTPHONE, INC. PRESENTATIONS TO FCC: April 2-3, 2013

About UTPhone

- Wireline CLEC and Low Income ETC serving about 25,000 Low Income Oklahomans, primarily on tribal lands, since 2004.

Since Spring 2012, UTPhone has been a *facilities-based* ETC, deploying advanced infrastructure in its Tribal lands service area.

- Hybrid fiber and wireless middle-mile network, with 81 towers covering a 500 square mile area– all on Tribal lands. Expansion will increase coverage to up to 34,000 subscribers on a 700 square mile Tribal land area.
- This new network enables UTPhone to bring high speed broadband to low income Tribal lands consumers who are struggling to enter the Internet age, and indeed to many who until now have been unserved or underserved by broadband.

Petition for Waiver of new Tribal Link Up rules (filed 6/21/12; Public Notice 8/8/12)

- Lifeline Reform Order seeks to “*advance* the availability of Lifeline *and Link Up* support for low income consumers living on or near Tribal lands;” so, while the Order ended Link Up elsewhere, it continued Tribal Link Up for ETCs that “are building telecom infrastructure on Tribal lands, which have significant telecom deployment and connectivity challenges” (§§ 60, 254).
- But it did so not by limiting Tribal Link Up support to ETCs that build infrastructure on Tribal lands (the objective), but by limiting Link Up only to ETCs that are presently “*receiving high-cost support.*” (§§ 54.413(a), 54.414(a)).
- Because UTPhone deployed network to Tribal lands after 12/31/11, the CETC phaseout precludes it from receiving high cost (HCF) support; so it (and its Tribal lands customers) cannot qualify for Tribal Link Up support absent a waiver.
- In Tribal service areas in Oklahoma, connection costs are high (\$275). So to serve Lifeline customers UTPhone needs the same Link Up support that its ILEC competitors there now receive.
- FCC Public Notice 8/8/12 (DA 12-1285), pleading cycle concluded 9/24/12: **No comments, no opposition.**

New development: 1/13 Oklahoma Corporation Commission (OCC) Order affirming UTPhone’s facilities-based status, removing its Lifeline-only ETC limitation, and supporting its FCC Waiver Petition.

Given that the OCC has found HCF qualification of UTPhone in the public interest, the FCC should respect that finding by granting the Waiver Petition.

- UTPhone’s competitors are receiving Tribal Link Up; only it is not.
- UTPhone, uniquely among current ETCs, is doing what the Tribal Link Up rule is seeking to achieve: building advance network on Tribal lands.
- UTPhone, as wireline, is not hampered by many of the program’s problems (wireless duplicate subscriptions, tent marketing, etc.).

UTPhone's FCC Waiver Petition: Challenge and Opportunity

The State of Oklahoma has been inundated with new filings of wireless carriers (mostly resellers) to provide Lifeline service. Wireless Lifeline has its place and serves well in certain circumstances; however, it does not provide the low income Oklahoman an avenue to broadband access.

The Low Income program has received a lot of bad press over subsidized cell phones. Oklahoma in particular has been put in a negative spotlight by low income ETCs operating with little or no compliance procedures, resulting in thousands of duplicate Lifeline subscriptions and millions of USF dollars being paid out that may never be recovered. While some carriers including UTPhone have strived to be compliant with the "one per household" rule, others have looked the other way while consumers ordered duplicate service subscriptions. The steps taken by the FCC to corral lifeline waste and abuse are starting to work, and the National Accountability Database will do even more to eliminate abuse. While this is a positive turn, it will be difficult to change the mindset of many, including Members of Congress, who think that Lifeline is a "luxury" that should be terminated. It would be enormously beneficial to be able to show fair-minded Americans a good example of how the FCC is disbursing low-income USF funds that are being used to not only to provide voice telephone service to low income Oklahomans, but also to build advanced broadband infrastructure that will benefit both low income subscribers and the entire state of Oklahoma. UTPhone is singularly positioned to do just that.

Low-income Oklahomans have a unique opportunity to be on the leading edge of new technology that can provide Lifeline voice services along with access to broadband. Because UTPhone is building a broadband network that uses VoIP technology to provide dial tone to its Lifeline customers, they will also be able to receive broadband internet at a fraction of the price charged by other carriers. Our Lifeline customers residing on Tribal lands are able to receive dial tone for \$1.00 per month, and as we migrate them to our own network they will be able to receive broadband internet access for only \$10.00 per month, which is a fraction of the cost of comparable services. With Tribal Link Up support to defray expensive connection costs, UTPhone will be able to expand its network to serve thousands more low income Oklahomans; and by expanding that network, UTPhone will also be able to serve non-Lifeline residential as well as business customers that until now have been underserved or in many cases unserved. It is rare that one program has the opportunity to produce so much value for so many.

Areas in rural Oklahoma where there is limited or no access to broadband consistently also have the lowest income, lowest graduation rate, lowest employment, and highest population loss. Without Lifeline/Link Up these areas will be the last in line to have new network deployed. With Tribal Link Up, UTPhone will be able to help transform this broadband desert into an information oasis that serves thousands of Oklahomans of all socio-economic levels.

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

JLM
MC
APPLICATION OF UTPHONE, INC. TO) CAUSE NO. PUD 201200213
REMOVE LIMITATIONS ON ITS)
DESIGNATION AS AN ELIGIBLE) ORDER NO. **606769**
TELECOMMUNICATIONS CARRIER)
STATUS PURSUANT TO THE)
TELECOMMUNICATIONS ACT OF 1996)

HEARING: December 20, 2012, in Courtroom B
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before James L. Myles, Administrative Law Judge

APPEARANCES: J. David Jacobson, Attorney *representing* UTPhone, Inc.
Allison Chandler, Assistant General Counsel *representing* Public Utility
Division, Oklahoma Corporation Commission

**FINAL ORDER REMOVING LIMITATIONS TO ELIGIBLE
TELECOMMUNICATIONS CARRIER DESIGNATION**

BY THE COMMISSION:

The Corporation Commission of the State of Oklahoma ("Commission") being regularly in session and the undersigned Commissioners being present and participating, there comes on for consideration and action the Application of UTPhone, Inc. ("UTPhone" or "Applicant"), for an Order removing limitations on its Eligible Telecommunications Carrier ("ETC") status pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended ("Act"), 47 U.S.C. §214(e)(2), and Section 54.201 of the Federal Communications Commission's ("FCC") rules, 47 C.F.R. §54.201.

I. PROCEDURAL HISTORY

On September 20, 2012, UTPhone filed an Application requesting that the Commission issue an order removing the limitations on UTPhone's status as an ETC throughout UTPhone's licensed service areas in Oklahoma. On September 27, 2012, UTPhone filed a Supplement to the Application.

On October 4, 2012, Applicant filed a Motion for Order Establishing Procedural Schedule which came on for hearing before the Administrative Law Judge ("ALJ") on October 11, 2012. On October 25, 2012, the Commission issued Order No. 603491 in which it established the procedural schedule for the Cause.

On November 13, 2012, UTPhone filed a Motion for Protective Order which was heard on November 15, 2012. On November 29, 2012, the Commission issued Order No. 604701 granting the Motion for Protective Order.

On November 15, 2012, UTPhone filed the prefiled direct written testimony of Jason Ledlow. On December 17, 2012, UTPhone filed a Second Supplement to the Application.

The Responsive Testimony of Barbara L. Mallett on behalf of the Commission's Public Utility Division Staff ("Staff") was filed on December 18, 2012.

The Cause came for hearing on December 20, 2012, before the ALJ.

II. SUMMARY OF THE EVIDENCE

Jason Ledlow, President of UTPhone testified on behalf of UTPhone. Mr. Ledlow testified that UTPhone is an Oklahoma corporation with its headquarters located in Oklahoma City, Oklahoma. He testified that UTPhone is a competitive local exchange carrier ("CLEC") granted a Certificate of Convenience and Necessity ("CCN") and authorized by the Commission to provide both local exchange and intrastate interexchange telecommunications services within the State of Oklahoma. He testified that UTPhone was granted a CCN to provide local exchange services in 2001 and was granted a CCN to provide intrastate interexchange services in 2004. Mr. Ledlow testified that UTPhone was designated as an ETC on a wireline basis in Oklahoma in August 2006 in Cause No. PUD 200600090, by Order No. 527973.

Mr. Ledlow testified that UTPhone's ETC designation granted by Order No. 527973 was for the limited purpose of receiving Lifeline/LinkUp support only. He testified that the purpose of UTPhone's Application is to remove the prior Lifeline/LinkUp-only limitation to allow UTPhone to qualify, on a prospective basis, for federal universal service funding not limited to Lifeline/LinkUp that will become available as a result of newly adopted federal programs. Mr. Ledlow further testified that the removal of the limitation will facilitate UTPhone's pending request at the FCC for a waiver of certain FCC rules which would allow UTPhone to qualify for federal Tribal LinkUp support on an equitable basis relative to other ETCs operating on Tribal Lands in Oklahoma.

Mr. Ledlow testified that the newly adopted federal program in which UTPhone would be able to participate if the limitation is removed is the FCC's Connect America Fund ("CAF"), which is intended to accelerate the build-out of broadband infrastructure to rural America. Mr. Ledlow testified that the CAF is the result of comprehensive reforms recently undertaken by the FCC pertaining to the Universal Service Fund ("USF") and the Intercarrier Compensation ("ICC") systems. He testified that UTPhone's participation in the fund will benefit Oklahoma consumers because it will assist UTPhone in the expansion of its broadband infrastructure thereby bringing the benefits of high-speed Internet service to consumers which will, in turn

foster the adoption of broadband services by low income consumers on Tribal Lands, drive economic growth, expand the online marketplace and create jobs and business opportunities. Mr. Ledlow testified that removal of the limitations will have no effect on any other ETC. He explained the reason is that the federal high cost fund is frozen and federal high cost support to competitive ETCs such as UTPhone is being phased out. Because UTPhone was not receiving high cost support as of the cutoff date of December 31, 2011, UTPhone is precluded from receiving any support even during the phase-out period. Thus, UTPhone's participation in the CAF program will have no effect on support received by any other ETC.

Mr. Ledlow testified in general terms regarding the network infrastructure that UTPhone has installed or deployed after December 31, 2011, and explained that UTPhone will receive no USF LinkUp Tribal support for deploying its facilities absent a waiver from the FCC of the FCC's new Tribal LinkUp rules. He further testified that such support is needed in light of the often expensive connection costs on Tribal Lands and that it is unfair from a competitive standpoint as other facilities-based carriers that serve low income Lifeline customers on Oklahoma Tribal Lands are eligible for and do receive such support. Mr. Ledlow testified that UTPhone has petitioned the FCC for a waiver of the portion of its Tribal LinkUp rules that restrict support only to carriers that are already receiving high cost support. He testified that removing the limitations on UTPhone's ETC designation in Oklahoma will aid UTPhone's efforts to obtain the FCC waiver.

Ms. Barbara L. Mallett, Public Utility Regulatory Analyst, testified on behalf of the Commission Staff. Ms. Mallett affirmed that UTPhone is asking the Commission to remove the restrictions on its ETC designation in its Oklahoma study area. She affirmed that although UTPhone has received Low Income Program support from federal USF funds, it has not received LinkUp support since June 1, 2012, the date of the FCC's LinkUp modifications, and has received no federal high cost support funds. She testified that UTPhone will, if the restrictions are lifted, provide facilities-based telecommunications services throughout its designated service area. She corrected her prefiled Responsive Testimony to say that at present, roughly one third of UTPhone's customer base is located within the footprint of UTPhone's facilities and that UTPhone is in the process of migrating its customers from AT&T UNEs to UTPhone facilities. She further testified that UTPhone is able to distinguish between UNE-provisioned subscribers and facilities-based-provisioned subscribers with the switch it currently owns. Ms. Mallett testified that UTPhone provided a five-year build out plan and identified how it will remain functional in emergencies. Ms. Mallett further testified that it is reasonable for UTPhone to once again be eligible for federal LinkUp support and that such support would benefit Oklahoma consumers.

Ms. Mallett then testified to other additional points the Commission should consider in making a public interest finding as suggested by ALJ Snapp in Cause No. PUD 20070048, and which the Commission has considered in other similar causes, and concluded that removing the Low Income Program restrictions as requested by UTPhone will serve the public interest. Ms.

Mallett further recommended that the Commission find that UTPhone has met all requirements for the Commission to lift the Low Income Program restriction on UTPhone's current designation in AT&T Oklahoma's exchanges; that lifting the restriction serves the public interest and that the restriction should be removed. She further recommended that UTPhone be ordered to provide a status report of its build out plan quarterly until the build out is complete.

There were no questions for Ms. Mallett by the ALJ who recommended approval of the application.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds that it has jurisdiction of this matter by virtue of 47 U.S.C. §214(e); 47 C.F.R. §54.101 through 207; Art. IX, §18 of the Oklahoma Constitution; and 17 O.S. §139.106.

The Commission further finds that the request of UTPhone to remove the current limitations on UTPhone's ETC designation as requested by UTPhone is in the public interest and will allow UTPhone the opportunity to participate in the FCC's Connect America Fund, which will benefit Oklahoma consumers in the rural areas in which UTPhone serves and will not harm any other ETC.

The Commission further finds that UTPhone should provide to the Commission's Public Utility Division, status reports on its five-year build out plan on a quarterly basis until UTPhone's build out is complete.

There being no oral appeal taken to the recommendation of the ALJ, such recommendation becomes the order of the Commission upon the signature of a majority of the Commission.

IV. ORDER

IT IS THEREFORE THE ORDER OF THE CORPORATION COMMISSION of the State of Oklahoma that the Recommendation of the Administrative Law Judge is hereby approved.

IT IS FURTHER ORDERED that the Application, as amended, of UTPhone, Inc., for an Order removing limitations on its Eligible Telecommunications Carrier status is hereby approved, consistent with the findings herein.

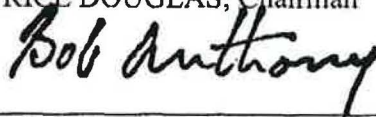
IT IS FURTHER ORDERED that all restrictions on UTPhone's ETC designation imposed by Order No. 527973 in Cause No. PUD 200600090 are hereby removed.

IT IS FURTHER ORDERED that all findings of fact and conclusions of law set forth above are hereby adopted as the Order of the Commission.

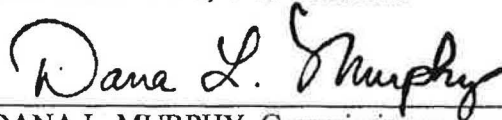
THIS ORDER SHALL BE EFFECTIVE immediately.

OKLAHOMA CORPORATION COMMISSION

PATRICE DOUGLAS, Chairman



BOB ANTHONY, Vice Chairman



DANA L. MURPHY, Commissioner

CERTIFICATION

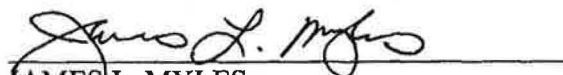
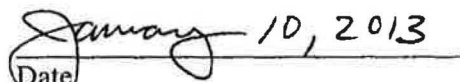
DONE AND PERFORMED by the Commissioners participating in the making of this Order, as shown by their signatures above, this 22 day of January, 2013.

[Seal]


PEGGY MITCHELL, Secretary

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing findings, conclusions and order are the report and recommendations of the undersigned administrative law judge.


JAMES L. MYLES
Administrative Law Judge
Date

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

**APPLICATION OF UTPHONE, INC. TO REMOVE LIMITATIONS ON ITS
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER STATUS
PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996**

Cause No. PUD 201200213

FILED
DEC 18 2012

**COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA**



**RESPONSIVE TESTIMONY
OF
BARBARA L. MALLET**

**RESPONSIVE TESTIMONY
OF
BARBARA MALLET**

*Application of UTPhone, Inc. To Remove Limitations on its
Designation as an Eligible Telecommunications Carrier Status
Pursuant To the Telecommunications Act of 1996*

December 17, 2012

PURPOSE

Q: What is the purpose of PUD's testimony?

A: The purpose of this testimony is to make PUD's public interest recommendation in the matter of UTPhone, Inc.'s (UTPhone's) application for an unrestricted designation as a Competitive Eligible Telecommunications Carrier (CETC) in AT&T Oklahoma's Talihina exchange and Windstream Oklahoma, LLC's (Windstream OK's) study area (the requested exchanges).

INTRODUCTION

Q: Please state your name and business address.

A: My name is Barbara L. Mallett. My business address is the Jim Thorpe Office Building, Room 580, Oklahoma City, OK 73105.

Q: Where are you employed and in what capacity?

A: I am employed by the Public Utility Division (PUD) of the Oklahoma Corporation Commission (the Commission) as a Public Utility Regulatory Analyst. I report directly to James L. Jones, Regulatory Manager.

1 **Q: Have you testified previously before the Commission?**

2 A: Yes, I have.

3 **Q: Have your credentials been accepted by the Commission?**

4 A: Yes, they have. Please refer to Attachment BM1 for a specific description of my education
5 and experience.

6 **PUD'S ANALYSIS**

7 **Q: Please explain the specific nature of UTPhone's request in this application?**

8 A: UTPhone asks the Commission to lift the Low Income Program only restriction on its
9 designation as a wireless CETC in AT&T Oklahoma's exchanges.

10 **Q: Is UTPhone certificated to provide telecommunications services in Oklahoma?**

11 A: Yes. It was certificated in Oklahoma to provide CLEC services by Order No. 455298¹ and
12 resold toll services by Order No. 497259².

13 **Q: Has UTPhone been designated as a CETC in Oklahoma?**

14 A: Yes. The Commission designated UTPhone as a UNE-based wireline CETC, eligible for
15 support from federal and state Low Income Program funds, by Order No. 527973³. This
16 designation covered the entire study area of Southwestern Bell Telephone Co. d/b/a AT&T
17 Oklahoma.

18 **Q: Has UTPhone received support from the federal Universal Service Funds as a result of**
19 **its designation in the requested exchanges?**

20 A: Yes. Universal Service Administrative Company's (USAC's) disbursement tools indicates
21 that UTPhone received Low Income Program support of roughly \$4.6 million in 2011 and

¹ Cause No. PUD 200100282, Order No. 455298, Order date August 16, 2001.

² Cause No. PUD 200400318, Order No. 497259, Order date November 5, 2004.

³ Cause No. PUD 200600090, Order No. 527973, Order date August 2, 2006.

1 \$10.6 million in 2012 through November. UTPhone has not received Link Up support since
2 the effective date of the FCC's Link Up modifications⁴, June 1, 2012.

3 **Q: Have other carriers been granted unrestricted designation as ETC's in the study area**
4 **requested by UTPhone?**

5 A: Yes. Please refer to Attachment BM2 for a complete listing of CETCs by study area,
6 exchange and relevant restrictions.

7 **Q: Will UTPhone continue to provide Lifeline and Link Up services if the Low Income**
8 **Program restriction (the restriction) is lifted?**

9 A: Yes.

10 **Q: Will UTPhone provide facilities-based services throughout its designated service area if**
11 **the restriction is lifted?**

12 A: Mr. Ledlow provided maps of his existing facility locations, and planned future locations
13 along with the associated cost information. At present, roughly one third of UTPhone's
14 customer base is provisioned using company-owned facilities, rather than AT&T Oklahoma's
15 UNEs. Most of the rest of his customers live in the two areas shown on the maps in which
16 construction on additional facilities has begun. By the close of 2017, Mr. Ledlow plans to
17 serve his entire customer base using UTPhone's own facilities. As additional customers are
18 added, they will receive facilities-based service, with UTPhone building out new facilities as
19 needed.

20 **Q: What is UTPhone's eventual goal?**

21 A: Mr. Jason Ledlow stated to PUD, and in filed supplemental testimony, that his goal is to
22 provide facilities-based local services to all of his customers by year end 2017 and no longer
23 use AT&T Oklahoma's UNE-based services.

⁴ In the Matter of Lifeline and Link Up Reform and Modernization Lifeline and Link Up Federal-State Joint Board on Universal Service Advancing Broadband Availability Through Digital Literacy Training (*Lifeline Reformation Order*); WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45 and WC Docket No. 12-23; rls. February 6, 2012, pp 271 through 282.

1 **Q: Is UTPhone able distinguish between UNE-provisioned sugscribers and facilities-based-**
2 **provisioned subscribers with the switch it owns today?**

3 A: UTPhone owns a Class 5 Metaswitch that has that capability.

4 **Q: For purposes of federal Link Up support, is Mr. Ledlow aware that he will not be**
5 **eligible for Link Up support for any customers other than those he serves using his own**
6 **facilities?**

7 A: Yes, he is. He has also filed supplemental testimony with an affidavit containing a statement
8 to that effect.

9 **Q: Why is UTPhone seeking unrestricted designation in the requested exchanges?**

10 A: Unrestricted designation will confer eligibility to participate in the FCC's new Connect
11 America⁵ Fund (CAF). If successful in winning federal support, UTPhone will receive
12 funding to assist in its facilities build out. UTPhone is deploying VoIP/WiFi⁶ facilities to
13 serve its customers and plans to provide landline services to customers in AT&T Oklahoma's
14 more rural areas. PUD reviewed UTPhone's proposed five-year build out plans and finds
15 them to be reasonable and acceptable.

16 **Q. Are any other actions necessary for UTPhone to requalify for federal Link Up support?**

17 A. Yes. UTPhone has requested waiver of the FCC's March, 2011 freeze on High Cost Fund
18 support (the freeze). The freeze eliminated high cost support funding for CETCs, such as
19 UTPhone, that were not actually receiving high cost support for provision of their services on

⁵ The **CAF Mobility Fund** is the first universal service mechanism dedicated to ensuring availability of mobile broadband networks in areas where a private-sector business case is lacking.

⁶ **WiFi** is a popular technology that allows an electronic device to exchange data wirelessly over a computer network, including high-speed Internet connections. The Wi-Fi Alliance defines Wi-Fi as any "wireless local area network (WLAN) products that are based on the Institute of Electrical and Electronics Engineers' (IEEE) 802.11 standards".¹¹ However, since most modern WLANs are based on these standards, the term "Wi-Fi" is used in general English as a synonym for "WLAN".

A device that can use Wi-Fi (such as a personal computer, video-game console, smartphone, tablet, or digital audio player) can connect to a network resource such as the Internet via a wireless network access point. Such an access point (or hotspot) has a range of about 20 meters (65 feet) indoors and a greater range outdoors. Hotspot coverage can comprise an area as small as a single room with walls that block radio waves or as large as many square miles — this is achieved by using multiple overlapping access points.

1 Tribal Land on December 31, 2011. Without the waiver, UTPhone will not be eligible for
2 Link Up support regardless of the decision of this Commission.

3 **Q: In PUD's view would it be reasonable for UTPhone to again be eligible for federal Link**
4 **Up support?**

5 A: Yes. UTPhone's plans to originate and terminate calls using WiFi technology will require
6 equipment to be physically installed on a customer's premises. UTPhone's tariffed set up
7 charge is \$70.00. Link Up support now funds 100% of the first \$100 of service set up
8 charges. The customer will pay nothing.

9 **Q: UTPhone is already designated as a CETC. Is a public interest finding necessary?**

10 A: 47 C.F.R. § 54.202(b)⁷ requires a public interest finding for any designation in a rural
11 exchange granted by a state pursuant to 47 U.S.C. 214(e)(6), and does not prohibit such a
12 finding in a non-rural exchange. While UTPhone is already designated, it is requesting a
13 change in the terms of its designation in the requested exchanges. In addition to the
14 requirements for designation restricted to Low Income Program support, an applicant for
15 High Cost Support must demonstrate a long term commitment to build, maintain and expand
16 a telecommunications network in conformance with 47 C.F.R 54.201 and 202. An applicant
17 for High Cost support must present evidence of such a commitment in the form of a five year
18 build out plan and demonstration that it can remain functional in emergency situations. In
19 PUD's view, the lifting of a Low Income Program restriction from a CETC's designation
20 order is identical to an original designation for High Cost Fund support purposes, including a
21 public interest finding.

22 **Q: Has UTPhone provided the required additional information?**

23 A: Yes. UTPhone provided a five-year build out plan and explained how it will remain
24 functional in emergencies.

25 **Q: Is PUD aware of other relevant requirements?**

⁷ 47 C.F.R. § 54.202(b) Public Interest Standard. Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest.

1 A: Yes. In her ALJ's Report in Cause No. PUD 200700408, ALJ Snapp recommended the
2 Commission consider several additional points in making a public interest finding in
3 designation causes involving rural exchanges.

4 **Q: Please address each point.**

5 A: *Point 1 - Will the public receive a benefit from the designation of another carrier as an ETC*
6 *in this service area?*

7 In PUD's view, yes. While this cause will not result in designation of a new CETC in the
8 requested exchanges, it may result in a currently designated CETC being eligible for
9 additional federal support. UTPhone has provided telecommunications services in Oklahoma
10 since its certification in 2004. UTPhone employs about 20 Oklahomans to provide its
11 services. It participates in such community-based projects as Intercity Basketball programs,
12 *Coats for Kids* and distributing bottled water during the summer from its agent locations.
13 UTPhone does not own storefronts, but maintains a presence in various agent locations. It
14 has locations in all Homeland Stores, Ace Cash Express, and roughly 35 other retail locations
15 including "Mom and Pop" groceries, electronic repair shops and pawn shops? UTPhone
16 does not market its services via mobile locations.

17 *Point 2 - Will the goal of universal service be advanced by the designation of another carrier*
18 *in this service area? (e.g. Will more customers be connected to the telecommunications*
19 *network as a result of designating another ETC in this service area?)*

20 While it is unlikely that more customers will connect to the telecommunications network as a
21 result of lifting the Low Income Program restriction from UTPhone's designation, if
22 UTPhone is successful in its bid for additional federal support for build out, it will be
23 required to build out and provide broadband services under the FCC's *USC/ICC*
24 *Transformation Order*⁸. The FCC has established specific speed requirements and time

⁸ REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING (*USF/ICC Transformation Order*), In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208

1 frames for broadband service provision. Further, these orders require that the broadband
2 services be offered at affordable rates. If the Low Income Program restriction is lifted from
3 OWTC's designation, its customers will likely receive the benefit of new and advanced
4 technologies. In addition, UTPhone will offer alternative landline local services in areas
5 where AT&T Oklahoma's traditional landline services may be gradually withdrawn.

6 *Point 3 - Will customers who do not have telephone service from the ILEC be able to obtain*
7 *telephone service as a result of the designation of the carrier as an ETC? (e.g. will the*
8 *customer have the ability to get telephone service in a location not currently served by the*
9 *wireline company?*

10 No evidence has been presented to support this point.

11 *Point 4 - Will there be any adverse effect upon the public or the USF funds by the*
12 *designation of another carrier as an ETC in this service area? (e.g. will the additional cost to*
13 *the federal universal service fund be sufficiently offset by the benefits realized by the public*
14 *as a result of designating a second ETC within the service area?)*

15 No. While this cause will not result in designation of a new CETC in the requested
16 exchanges, it may result in a currently designated CETC being eligible for additional federal
17 USF support. Therefore the issue is relevant. The public in the requested exchanges is likely
18 to benefit from UTPhone's receipt of additional federal funding in the ways that have been
19 discussed in response to prior questions.

20 In addition, traditional USF funds will not be adversely impacted. The existing High Cost
21 Funds are frozen at March 2011 levels by the company and, over the next five years, will be
22 phased out in favor of the CAF and Mobility Funds. UTPhone will be ineligible for support
23 from the traditional High Cost Funds and must compete for support from the CAF fund.

24 Impact on the new funds will not be adverse or unplanned. The FCC has set aside specific
25 amounts to be used to support the CAF and Mobility funds. The support will be awarded
26 regardless of whether UTPhone is able to participate in the auctions or not. If the restriction

1 on UTPhone's designation is lifted, Oklahoma and its citizens may benefit. If it is not lifted,
2 they will not.

3 Finally, under the *USF/ICC Transformation Order*, only one provider per technology will
4 receive federal funding from the CAF and the Mobility Funds within each geographical area.
5 Applicants for funding will submit sealed bids to the FCC stating their cost to provide service
6 and projected build out plans and associated costs in the geographical area where they have
7 an unrestricted designation. Only one bidder will be chosen in each geographical area. In
8 this way the FCC believes it can control fund levels and avoid the waste of duplicative
9 networks.

10 **Q: In conclusion, has UTPhone met all of the state and federal requirements for**
11 **designation in the proposed exchanges on an unrestricted basis?**

12 A: Yes.

13 **Q: In PUD's opinion, will lifting of the Low Income Program restriction serve the public**
14 **interest in the requested exchanges?**

15 A: Yes.

16 **RECOMMENDATION**

17 **Q: What is PUD's recommendation?**

18 A: For the reasons discussed above, PUD recommends the Commission find that UTPhone has
19 met all requirements for the Commission to lift the Low Income Program restriction on
20 UTPhone's current designation in AT&T Oklahoma's exchanges; that lifting the restriction
21 serves the public interest; and that the restriction should be lifted. PUD further recommends
22 that UTPhone be ordered to provide a status report on its build out quarterly until the
23 buildout is complete.

24 **AFFIRMATION**

25 I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct

1 in substance and in fact to the best of my knowledge, information, and belief.

2
3
4
5

(Signature)

(Date)